

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 32 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

RAJENDRABHAI GORDHANBHAI BHAKTA

Versus

BALUBHAI JATARIYABHAI GAMIT

Appearance:

MR MB PARIKH for Petitioner

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 10/01/2001

ORAL JUDGEMENT

1. By this Revision Application the Revisioner challenges the judgement and order passed by Joint District Judge at Vyara in Civil Miscellaneous Appeal No.

277/1994 passed on November 30, 2000 dismissing the appeal.

2. The said appeal was preferred against the order passed below Exh. 5, the application for interim injunction in Regular Civil Suit No. 69/1992 passed by the Civil Judge, (Junior Division) at Vyara.

3. Regular Civil Suit No. 69/92 was preferred by the present appellant against respondents claiming that he is the owner and occupant of lands bearing Survey Nos. 230 and 229 of Village Junvan, Taluka Songadh of Junagadh District which have been re-numbered as Survey Nos. 193 and 194. The said land were originally owned by Parvez Sorabji. The said land were cultivated as tenant by the plaintiff-appellant for a long time. The plaintiff-appellant preferred Tenancy Case No. 67/76 before Mamlatdar, Songadh and the Mamlatdar Songadh by his order dt. April 30, 1976 declared the appellant as tenant. The appellant has been enjoying the possession of the property since then. It was contended further, that the defendants have no right or interest in the property but only with a view to snatch away the property the defendants preferred Tenancy Case Nos. 71/90 and 75/90 before Mamlatdar, Songadh and obtained orders in their favour. The said orders were challenged in Tenancy Appeal before Deputy Collector bearing Tenancy Appeal Nos. 17/91 and 16/91 wherein the said orders passed in Tenancy Case Nos. 71/90 and 75/90 came to be set-aside and the appellants rights and tenancy were confirmed. Revision Applications No. 106/92 & 107/92 were preferred before G.R.T. whereby the operation of order of Deputy Collector came to be stayed. Ultimately, the plaintiff-appellant sought a relief against the respondents restraining them from entering into suit properties and disturbing the possession/occupation being enjoyed by the plaintiff.

4. The Trial Court after considering the rival contentions and considering the material on record came to the conclusion that the plaintiff failed to establish prima facie case, balance of convenience or irreparable loss likely to be suffered by him. Application for temporary injunction, therefore came to be dismissed.

5. The said order was challenged in Appeal before learned Joint District Judge, who after considering the merits by the impugned order, dismissed the appeal and confirmed the order of the Trial Court.

6. The appellant has, therefore, challenged the said

order before this Court by this Revision Application under Section 115 of the Civil Procedure Code.

7. Learned Advocate, Mr. Parikh appearing for the Revisioner submitted that both the Courts below have not correctly appreciated the facts and material on record. He submitted that the Courts below have accepted the situation that there are conflicting orders passed in favour of both the parties by the Revenue Courts. There is material to indicate that the order in favour of the Revisioner, has not been disturbed and despite this, the Courts below have not accepted the plaintiffs case.

8. Mr. Parikh, has taken this Court through the order of the Courts below. He has also shown to this Court order passed in Appeal No. 12/1992 and Tenancy Case No. 67/76 passed on 31.01.1993.

9. On perusal it is found that the Court below have taken into consideration all the relevant factors, and relevant material. It is a fact conceded to by learned Advocate for the opponent Mr. Parikh that the orders of the Revenue Courts are in favour of both the sides. According to him the order in favour of the Revisioner has attained finality. However, it may be noted that the order passed by the Revenue Tribunal in Revision Application No. 107/92 and 106/92 indicates that the situation was set at naught by an order whereby the order by Deputy Collector has been stayed. The controversy was set back to square one whereby case of neither of the parties can be said to have been accepted. Be that as it may, this Court, while exercising Revisional jurisdiction finds that both the Courts below after considering the material on record has arrived at the finding that the Revisioner has no case for injunction as sought for, is not inclined to interfere with the said order made by the Court below. In Kempaiah Vs. Chikkaboramma (Smt) and Ors.(1998)6 SCC 667 where it has been stated that while exercising jurisdiction under Section 115, Civil Procedure Code, the Court does not exercise appellate jurisdiction and cannot substitute its own views. No jurisdictional error is indicated to have been committed by the Lower Court while passing the impugned order which may call for interference in exercise of Revisional Powers. This Court therefore is not inclined to interfere in this application. This application stands dismissed. No costs.

(A.L. DAVE, J)

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